Supreme Court, U.S.
FILED
JAN 11 2000
CLERK

(3)

No. 99-747

IN THE

Supreme Court of the United States

HAROLD LEWIS,

Petitioner,

v.

KMART CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

SUPPLEMENTAL BRIEF FOR RESPONDENT

JOHN C. FOX
Counsel of Record
TIFFANY A. BASSETT
FENWICK & WEST LLP
Counsel for Respondent
Two Palo Alto Square
Palo Alto, CA 94306
(650) 858-7144

157254

Counsel Press LLC
(800) 274-3321 • (800) 359-6859

300

Respondent Kmart Corporation respectfully submits this Supplemental Brief in Opposition to Petitioner Harold Lewis' Petition for a Writ of Certiorari to alert the Court to new case law, pursuant to United States Supreme Court Rule 15.

In its initial brief in Opposition, Respondent stated that every circuit to address the precise issue presented in this case has held that Title I of the ADA does not require a long-term disability plan to provide equal benefits for mental and physical benefits. *Kimber v. Thiokol Corp., No.* 98-4106, 1999 U.S. App. LEXIS 29533 (10th Cir. November 12, 1999); *Ford v. Schering-Plough Corp.*, 145 F.3d 601, 608 (3d Cir. 1998), *cert. denied*, 119 S. Ct. 850 (1999); *Parker v. Metropolitan Life Ins. Co.*, 121 F.3d 1006, 1015 (6th Cir. 1997) (en banc), *cert. denied*, 118 S. Ct. 871 (1998); *EEOC v. CNA Ins. Co.*, 96 F.3d 1039, 1044 (7th Cir. 1996).

On January 3, 2000, the Ninth Circuit joined the list of unanimous circuit courts in accord with the Fourth Circuit below. In *Weyer v. Twentieth Century Fox Film Corp.*, 2000 WL 1643 (9th Cir. (Wash.)), the Ninth Circuit addressed the precise issue presented below and ruled that Title I of the ADA does not require a long-term disability plan to provide equal benefits for mental and physical benefits. *Id.* at *10. In addition, the *Weyer* court discussed and dismissed the plaintiff's contention that this Court's decision in *Olmstead v. L.C.*, 119 S. Ct. 2176 (1999), altered the reasoning or the validity of the great weight of authority cited above. *Id.*

For the reasons set forth above and in Respondent's Brief in Opposition, this Court should deny the Petition for Writ of Certiorari.

Dated: January 11, 2000

Respectfully submitted,

JOHN C. FOX
Counsel of Record
TIFFANY A. BASSETT
FENWICK & WEST LLP
Counsel for Respondent
Two Palo Alto Square
Palo Alto, CA 94306
(650) 858-7144